

**Honorable City Planning Commission
Cincinnati, Ohio**

March 16, 2012

SUBJECT: Authorize the City Manager to execute a Sale and Development Agreement with Music Hall Revitalization Company, Inc., an Ohio nonprofit corporation, which provides for the sale and renovation of certain City-owned property known as Music Hall, a national historic landmark, located at 1241 Elm Street in Over-the-Rhine.

BACKGROUND:

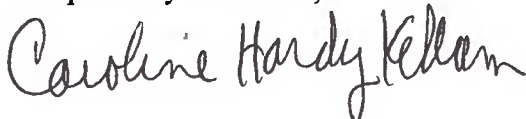
The City is the owner of Music Hall located at 1241 Elm Street in Over-the-Rhine, which is managed by Cincinnati Arts Association. Music Hall Revitalization Company, Inc. ("MHRC") desires to undertake a major renovation of Music Hall, at an estimated cost of \$165,000,000 and expected to take approximately 5 years to complete. MHRC expects to pay for the renovation by obtaining individual contributions, corporate pledges, state and federal historic tax credits, and New Market Tax Credits, all at no cost to the City. In order to apply for and obtain historic tax credits, MHRC must establish that it owns the property. The proposed sale and development agreement provides for the transfer of the property to MHRC for \$1.00. The proposed agreement also requires that the property continue to be used, in perpetuity, primarily as a performing arts and entertainment facility and for other community events, and also for private events and other ancillary uses (the "use restriction"). If MHRC fails to complete the project, the agreement provides that the City can require MHRC to reconvey the property to the City for \$1.00. If MHRC completes the project but subsequently violates the use restriction, the City's deed to MHRC provides that title to the property shall revert to the City.

RECOMMENDATION:

The staff of the Department of City Planning and Buildings recommends that the City Planning Commission take the following action:

Recommend the City Manager be authorized to execute a Sale and Development Agreement with Music Hall Revitalization Company, Inc., an Ohio nonprofit corporation, which provides for the sale and renovation of certain City-owned property known as Music Hall, a national historic landmark, located at 1241 Elm Street, which property is no longer needed for any municipal purpose.

Respectfully submitted,



Caroline Hardy Kellam
Senior City Planner

APPROVED:



Charles C. Graves III
Director of the Department of City Planning



FUGATE AL

PROVIDENCE ST

NOME AL

W 15TH ST

WHETSEL AL

MAGNOLIA ST

ADRIAN AL

W 14TH ST

CC-A



243 ELM ST, CINC

EZZARD CHARLES DR

PR

CENTRAL PKWY

CENTRAL AV

CLARK ST

AAG AL

TRUMAN AL

GRANT ST

SHUTE AL

EMERSON AL

GANDOLFO AL

W 13TH ST

BALDWIN AL

RACE ST

DD

IRA AL

W 12TH ST

ELM ST

PLEASANT ST

OSBORN AL

COMERS AL

GOOSE AL

PARRIS AL

REPUBLIC ST

CC-4

- 2012

AUTHORIZING the City Manager to execute a Sale and Development Agreement with Music Hall Revitalization Company, Inc., an Ohio nonprofit corporation, which provides for the sale and renovation of certain City-owned property known as Music Hall, a national historic landmark, located at 1241 Elm Street, which property is no longer needed for any municipal purpose.

WHEREAS, the City is the owner of the real property known as Music Hall located at 1241 Elm Street in Over-the-Rhine, consisting of approximately 3.265 acres (Hamilton County Book/Page/Parcel 81-3-40) (the "Property"); and

WHEREAS, the Property is currently managed by Cincinnati Arts Association pursuant to an *Agreement with the City* dated April 3, 1876, which provides that the building shall be used for the purposes of cultivating a taste for music, holding musical festivals, concerts, expositions of industry and art, and also for holding such conventions, fairs, public meetings and entertainments of any kind not prohibited by law; and

WHEREAS, the Property is very expensive to maintain and is in need of renovation and capital repairs; and

WHEREAS, Developer desires to undertake a sizable renovation project costing approximately \$165,000,000 and expected to take approximately 5 years to complete, to be funded from individual contributions, corporate pledges, state and federal historic tax credits, and New Markets Tax Credits (the "Project"); and

WHEREAS, Developer has represented to the City that, in order to apply for and obtain historic tax credits, Developer must acquire and hold fee simple title to the Property; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research; and

WHEREAS, the City has determined that the City's conveyance of the Property to Developer to facilitate the Project is commercial in nature because it will create and preserve

employment opportunities and stimulate the resurgence of economic growth currently taking place in Over-the-Rhine; and

WHEREAS, the City has determined that the Property is not needed for any municipal purpose; and

WHEREAS, the City of Cincinnati Real Estate Services Division has determined that the value of the Property, as determined by appraisal by the Hamilton County, Ohio Auditor, is \$12,665,240; and

WHEREAS, in furtherance of the foregoing public purpose, the City recommends that the Property be sold to Developer for less than its fair market value (namely, for \$1.00) because the City has determined that the City will receive equivalent economic and non-economic benefits from the Project that equal or exceed the fair market value of the Property in that the Project will create and preserve employment opportunities, stimulate economic growth in the area, and enable the building to be renovated and thereafter perpetually maintained and used as a first-class performing arts and entertainment facility, for the benefit of the people of the City; and

WHEREAS, the City has determined that selling the Property without competitive bidding is in the best interest of the City because the City has determined that Developer is uniquely suited to carry out a fund-raising and renovation project of this magnitude and complexity, and because of Developer's qualifications and commitment in ensuring that the Property will be perpetually maintained and used as a first-class performing arts and entertainment facility, for the benefit of the people of the City; and

WHEREAS, the City has determined that it is in the best interest of the City to permit Developer to hire a local construction company, Messer Construction, to be the construction manager for the Project due to its experience and reputation for successfully completing projects of this magnitude and complexity, and to permit the construction manager to selectively hire all subcontractors for the Project, without competitive bidding and without having to achieve the City's SBE goals, because of the highly specialized nature of the renovation work that will be performed by the subcontractors; and

WHEREAS, prior to the transfer of the Property by the City to Developer, and as a condition thereof, the City shall ensure that all conditions of the sale set forth in the City's Coordinated Report are satisfied; and

WHEREAS, the City Planning Commission, having the authority to approve the change in use of City-owned property, approved the sale of the Property to Developer at its meeting on _____, 2012; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a Sale and Development Agreement with Music Hall Revitalization Company, Inc. ("Developer") in

substantially the form of Exhibit A hereto (the “Development Agreement”), which provides for the City’s sale to Developer of the real property known as Music Hall located at 1241 Elm Street in Over-the-Rhine, consisting of approximately 3.265 acres (Hamilton County Book/Page/Parcel 81-3-40) (the “Property”), for \$1.00, to facilitate the renovation of Music Hall as described therein (the “Project”).

Section 2. That the Property is not needed for any municipal purpose.

Section 3. That the fair market value of the Property is approximately \$12,665,240 as determined by the City of Cincinnati Real Estate Services Division.

Section 4. That it is in the best interest of the City to sell the Property to Developer for less than fair market value (namely, for \$1.00) because the City has determined that the City will receive equivalent economic and non-economic benefits from the Project that equal or exceed the fair market value of the Property in that the Project will create and preserve employment opportunities, stimulate economic growth in the area, and enable the building to be renovated and thereafter perpetually maintained and used as a first-class performing arts and entertainment facility, for the benefit of the people of the City.

Section 5. That it is in the best interest of the City to sell the Property without competitive bidding because the City has determined that Developer is uniquely suited to carry out a fund-raising and renovation project of this magnitude and complexity, and because of Developer’s qualifications and commitment in ensuring that the Property will be perpetually maintained and used as a first-class performing arts and entertainment facility, for the benefit of the people of the City.

Section 6. That it is in the best interest of the City to permit Developer to hire a local construction company, Messer Construction, to be the construction manager for the Project due

to its experience and reputation for successfully completing projects of this magnitude and complexity, and to permit the construction manager to selectively hire all subcontractors for the Project, without competitive bidding and without having to achieve the City's SBE goals, because of the highly specialized nature of the renovation work that will be performed by the subcontractors.

Section 7. That Council authorizes the appropriate City officials to take all necessary and proper actions to fulfill the terms of the Development Agreement.

Section 8. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to enable the City to transfer the Property to Developer as soon as possible so that Developer can apply for historic tax credits for the Project on or before the March 30, 2012 deadline.

Passed: _____, 2012

Mayor

Attest: _____
Clerk

SALE AND DEVELOPMENT AGREEMENT

This Agreement is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), and **MUSIC HALL REVITALIZATION COMPANY, INC.**, an Ohio nonprofit corporation, the address of which is 409 Broadway, Cincinnati, OH 45202 ("**Developer**").

Recitals:

A. On April 3, 1876, the City and the CINCINNATI MUSIC HALL ASSOCIATION ("**CMHA**") entered into an *Agreement with the City* (the "**Existing Management Agreement**") pursuant to which CMHA was granted the right to construct and forever maintain and control the building commonly known as Music Hall (the "**Building**") located at 1241 Elm Street, at the southwest corner of Elm Street and W. 14th Street, Cincinnati, Ohio, as shown on Exhibit A (*Site Plan*) hereto (the Building, land, and any and all other improvements thereon being referred to collectively as the "**Property**"). CMHA completed construction of the Building in 1878. The Existing Management Agreement provides, among other things, that the Building shall be used for the purposes of cultivating a taste for music, holding musical festivals, concerts, expositions of industry and art, and also for holding such conventions, fairs, public meetings and entertainments of any kind not prohibited by law.

B. In 1927, and because the Building was in need of renovation, the City conveyed title to the Property to CMHA so that CMHA could obtain a loan for the renovation, and the City also granted permission to CMHA to place a mortgage on the Property as security for the loan.

C. CMHA defaulted on its loan and, in 1939, reorganization proceedings were instituted in Federal District Court.

D. In 1941, the Federal Court confirmed a plan under which CMHA conveyed title to the Property back to the City. The *Trustees' Deed* to the City, dated September 25, 1941 and recorded in Deed Book 1928, Page 348, Hamilton County, Ohio Records, expressly provided for CMHA's continued occupancy, maintenance and control of the Property under the Existing Management Agreement, but also provided for the City's right to cancel the Existing Management Agreement on 30 days written notice to CMHA.

E. CINCINNATI ARTS ASSOCIATION, an Ohio nonprofit corporation (together with its successors, "**CAA**") (successor to CMHA) has managed the Property ever since. In keeping with the spirit of the Existing Management Agreement, the Property is currently used as a performing arts and entertainment facility by the Cincinnati Symphony Orchestra, Cincinnati Opera, Cincinnati Ballet, and Cincinnati May Festival for performances and other entertainment and community events that are open to the public, and also for occasional private events such as receptions, dinners, parties, weddings, class reunions, and other social gatherings.

F. The Property is very expensive to maintain and, although CAA has provided day-to-day maintenance and repairs and, together with the Society for the Preservation of Music Hall, has made periodic capital improvements to the Property over the past 15 years using endowment funds and loan proceeds, the Building has deteriorated in recent years and is once again in need of renovation and capital repairs.

G. Developer, with the consent and participation of CAA, is prepared to undertake a sizable renovation project costing approximately \$165,000,000 and expected to take approximately 5 years to complete, as described generally on Exhibit B (*Scope of Work and Budget*) hereto (the "**Project**").

H. As of the date hereof, Developer has received approximately \$11,400,000 in pledges for the Project in the form of grants and charitable contributions. Developer anticipates that the remainder of the funds will come from individual contributions and corporate pledges through its on-going fund-raising efforts, from federal and state historic tax credits, and from New Markets Tax Credits.

I. Developer has represented to the City that, in order to apply for and receive historic tax credits, Developer must acquire and hold fee simple title to the Property.

J. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research.

K. The City has determined that the Project is commercial in nature.

L. The City's Real Estate Services Division has determined that the value of the Property, as determined by appraisal by the Hamilton County, Ohio Auditor, is \$12,665,240.

M. In exchange for Developer's commitment to (i) undertake the Project at no cost to the City, (ii) assume primary responsibility (as between the City and Developer) for the long-term management, operation, maintenance and repair of the Property, without reliance upon funding from the City, (iii) honor the City's Existing Management Agreement with CAA until such time as Developer and CAA enter into a new management agreement to supersede the Existing Management Agreement (unless Developer and CAA mutually determine that the execution of a new management agreement prior to the City's transfer of the Property to Developer is unnecessary), and (iv) ensure that the Property shall continue to be operated and maintained as a first-class performing arts and entertainment facility, and, further, in recognition that the Project will create and preserve jobs and stimulate economic growth in the vicinity, the City is willing to sell all of the City's right, title and interest in and to the Property to Developer for One Dollar (\$1.00).

N. The City has determined that eliminating competitive bidding is in the best interest of the City because the City has determined that Developer is uniquely suited to carry out a fund-raising and renovation project of this magnitude and complexity, and because of Developer's qualifications and commitment to ensure that the Property continues to be operated and maintained as a first-class performing arts and entertainment facility on a long-term basis, for the benefit of the people of the City.

O. The City has determined that it is in the best interest of the City to permit Developer to hire a local construction company, MESSER CONSTRUCTION, to be the construction manager for the Project due to its experience and reputation for successfully completing projects of this magnitude and complexity, and to permit the construction manager to selectively hire the subcontractors for the Project, without competitive bidding and without having to achieve the City's SBE goals, because of the highly specialized nature of the renovation work that will be performed by the subcontractors.

P. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Property to Developer at its meeting on _____, 2012.

Q. Execution of this Agreement was authorized by Ordinance No. ____-2012, passed by City Council on _____, 2012.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Purchase Price.** Subject to the terms and conditions set forth herein, the City hereby agrees to sell the Property to Developer, and Developer hereby agrees to purchase the Property from the City, for a purchase price of One Dollar (\$1.00). At Closing (as defined below), the City shall convey the Property to Developer in "as is" condition. Developer shall rely solely upon its own inspections to determine the condition of the Property. The City makes no representations or warranties to Developer with respect to the condition of the Property and shall have no liability of any kind, now or in the future, for any defects, adverse environmental condition, or any other matters affecting the Property. Developer acknowledges that there is currently in place an Office Lease dated September 19, 2003 pursuant to which the Cincinnati Opera Association leases a portion of the Building for office purposes (the "**Opera Lease**"). As provided in that certain Subordination, Non-Disturbance and Attornment Agreement between the City and Cincinnati Opera Association dated September 10, 2003, the Opera Lease shall not be affected by a termination of the Existing Management Agreement or by the City's sale of the Property. At Closing, Developer shall take title to the Property subject to the Opera Lease.

2. **Closing.**

(A) **Conditions.** The closing of this transaction shall not occur unless each of the following conditions ("**Conditions**") have been satisfied or waived:

- (i) **Title & Survey:** Developer's approval of the title to the Property and, if obtained by Developer, an ALTA property survey of the Property;
- (ii) **Inspections:** Developer's approval of inspections of the Property, including without limitation environmental assessments;
- (iii) **Appraisal:** Developer's approval of a property appraisal of the Property;
- (iv) **Budget:** The parties' approval of a final itemized budget for the Project, consistent with the preliminary budget attached hereto as Exhibit B (as approved by the parties and as the same may thereafter be amended from time to time in accordance with the provisions of this Agreement, the "**Budget**");
- (v) **Financing:** The City's receipt of evidence that Developer has received grants, pledges, and/or loan commitments in an amount sufficient for Developer to complete the first phase of the Project as shown on Exhibit B (or, if all of the funding for the first phase has not then yet been secured, in such other amount as the City may determine is appropriate);
- (vi) **Plans and Specifications:** The parties' approval of professionally-prepared architectural plans and specifications for the Project (which for all purposes shall be deemed to be owned by Developer) (as approved by the parties and as the same may thereafter be amended from time to time in accordance with the provisions of this Agreement, the "**Plans and Specifications**");
- (vii) **Construction Schedule:** The parties' approval of the proposed construction schedule for the Project (as approved by the parties and as the same may thereafter be amended from time to time in accordance with the provisions of this Agreement, the "**Construction Schedule**");
- (viii) **Satisfaction of Conditions in Coordinated Report:** The satisfaction of all conditions of the sale as set forth in the City's Coordinated Report (which as of this date has not yet been obtained), including without limitation conditions for the creation of utility easements in favor of Greater Cincinnati Water Works, Metropolitan Sewer District, Duke Energy, and Cincinnati Bell for any and all existing utilities that are located on the Property;

- (ix) Cincinnati Arts Association: Developer's execution of a new management agreement with CAA to manage the Property (to supersede the Existing Management Agreement), or, alternatively, Developer's and CAA's mutual determination that a new management agreement is unnecessary;
- (x) Feasibility Studies: The parties' determination that the Project is in all other respects feasible; and
- (xi) Other Information: The City's approval of such other information and documents as the City may reasonably require pertaining to Developer, the Project, and Developer's ability to successfully manage, operate, maintain and repair the Property on a long-term basis.

All of the investigations and documents referred to in this paragraph (A) shall be performed and obtained, as the case may be, at no cost to the City (except for the City's Coordinated Report, which the City shall be responsible for obtaining). Once the parties approve the Budget, Plans and Specifications, and Construction Schedule, Developer shall not make any material changes thereto without the written consent of the Director of the City's Department of Public Services, such approval not to be unreasonably withheld. As used in this paragraph, a material change requiring approval of the City shall mean (i) in the case of the Budget, any change in the Budget of greater than 5%; (ii) in the case of the Plans and Specifications, any change that affects the exterior of the Building, or any reduction in the size of the areas inside the Building that are used for rehearsals and performances, or any significant reduction in the quality of materials used in the renovation; and (iii) in the case of the Construction Schedule, any change that shortens or lengthens the construction timeline by more than 6 months (provided however that construction delays caused by acts of God or other events beyond Developer's reasonable control shall not require the City's approval). With respect to changes that are non-material and therefore do not require the City's approval, Developer shall nevertheless notify the Director of the City's Department of Public Services of such changes.

(B) Right to Terminate. If either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties and for that reason the Closing has not occurred by **March 30, 2012**, either party may terminate this Agreement by giving a written notice of termination to the other party at any time thereafter (but prior to the Closing), whereupon all rights and obligations of the parties hereunder shall terminate.

(C) Closing Date. The closing ("**Closing**") shall take place approximately thirty (30) days after the date on which the parties have mutually determined that all of the Conditions have been satisfied or waived, or on such earlier or later date as the parties may agree upon.

(D) Closing Documents; Closing Costs. At Closing, the City shall convey all of its right, title and interest in and to the Property to Developer (or, upon Developer's instruction, to a yet-to-be-formed limited liability company that is controlled by Developer) by Quitclaim Deed in the form of Exhibit C (Form of Deed) hereto. Developer shall pay any and all closing costs associated with the Closing. The parties acknowledge that the Property is presently exempt from real estate taxes; as such, there shall be no proration of real estate taxes at Closing. Developer shall pay any and all real estate taxes and assessments that become due and payable from and after the date of Closing. The City or CAA (as the case may be) shall be responsible for any and all utility costs and other operating costs up to (but not including) the date of Closing, and Developer shall be responsible for any and all utility costs and other operating costs from the date of Closing and thereafter. The provisions of this Agreement shall survive the City's execution and delivery of the Deed and shall not be deemed to have been merged therein.

(E) Effect of Closing on Existing Management Agreement. As referred to in paragraph 2(A)(iv) above, Developer, the City, and by signing this Agreement on the signature page hereof, CAA, hereby acknowledge and agree that, following the Closing, CAA shall have the right to continue to manage the Property under the Existing Management Agreement until such time as Developer and CAA execute a new management agreement or mutually determine that the execution of a new management agreement is unnecessary. For so long as CAA is the manager of the Property, CAA shall be entitled to the payments payable by the City to the operator of the Property under that certain Agreement dated July 5, 1973 between the City and The Corbett Foundation pertaining to the Town Center Garage on Central Parkway, opposite the Building.

3. Requirement to Complete the Project.

(A) Construction. Once the parties have approved the Budget, Plans and Specifications, and Construction Schedule and the Closing has occurred, Developer shall commence construction and thereafter cause the Project to be completed in accordance therewith and in a good and workmanlike manner.

(B) Applicable Laws. Developer shall obtain, pay for and maintain all necessary permits, licenses and other governmental approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to the construction of the improvements, including without limitation those set forth on Exhibit D (Additional City Requirements) hereto. The City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits or other approvals from the City's Department of Planning and Buildings, other City departments, City Planning Commission, the Historic Conservation Board, or City Council that may be required in connection with the Project.

(C) Inspection of Work. During construction, the City, its employees and agents shall have the right at all reasonable times to inspect the progress of construction to determine whether Developer is complying with its obligations under this Agreement. In addition, Developer, at no charge to the City, shall make its construction manager, project architect, general contractor or other representative of Developer reasonably accessible to the City to provide pertinent information about the Project. If the City determines that the Project is not in accordance with the Plans and Specifications or other requirements of this Agreement, is not in compliance with all applicable laws, or is not performed in a good and workmanlike manner, the City shall have the right, in its reasonable judgment, to stop such work and order its replacement at Developer's expense by giving written notice of such nonconforming work to Developer.

(D) Mechanics Liens. During construction, Developer shall not permit any mechanics' or other similar liens to remain on the Property. If a mechanics' lien shall at any time be filed against the Property, Developer shall cause the lien to be released within thirty (30) days after receiving notice that the lien has been filed.

(E) Insurance During Construction. Throughout construction, Developer shall maintain the following insurance: (i) Commercial General Liability insurance of at least Five Million Dollars (\$5,000,000) per occurrence, combined single limit, naming the City as an additional insured, (ii) special peril property insurance on the Building in such amount as Developer determines to be commercially reasonable, (iii) worker's compensation insurance in such amount as required by law, and (iv) all insurance as may be required by lenders or others providing financing for the Project. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Developer hereby waives all claims and rights of recovery, and on behalf of its insurers, rights of subrogation, against the City in connection with any and all losses, damages, injuries or deaths related to the Project.

(F) Indemnity. As a material inducement to the City to enter into this Agreement and permit Developer to undertake the Project, Developer shall and does hereby agree to defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Developer, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Developer in connection with the Project.

(G) Quarterly Reporting During Construction. During construction, Developer shall provide the City with quarterly reports (on a calendar quarter basis) describing the status of the Project, including without limitation information about whether the Project is on budget and on schedule and containing such additional pertinent information thereto as the City may from time to time reasonably request. Developer shall submit a final quarterly report to the City for the quarter in which the Project is completed.

(H) As-Built Drawings. Following completion of construction, if obtained by Developer, Developer shall provide the City with "as built" drawings of the Project.

(I) Recognition of City Participation. Developer shall acknowledge the support of the City with respect to the Project in all printed materials such as informational releases, pamphlets and brochures, construction signs, project and identification signage, and any publicity such as that appearing on the Internet, television, cable television, radio, or in the press or any other printed media. In identifying the City as a participant, Developer shall use either the phrase "Project made possible by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City. Developer's obligations under this section shall commence on the date of the parties' execution of this Agreement and shall terminate on the date on which the Project has been completed.

4. Default; Remedies.

(A) Default. The occurrence of any of the following shall be an "**event of default**" under this Agreement:

(i) The failure of Developer to perform any obligation under this Agreement, and failure by Developer to correct such failure within thirty (30) days after Developer's receipt of written notice thereof from the City; *provided, however,* that if the nature of the default is such that it cannot reasonably be cured within 30 days, Developer shall not be in default so long as Developer commences to cure the default within such 30-day period and thereafter diligently completes such cure within a reasonable period of time after Developer's receipt of the City's initial notice of default as determined by the City Manager. The foregoing notwithstanding, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Developer fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

(ii) The dissolution of Developer or the filing of any bankruptcy or insolvency proceedings by or against Developer, the making by Developer of an assignment for the benefit of creditors, the appointment of a receiver (temporary or permanent) for Developer, or the attachment of, levy upon, or seizure by legal process of any property of Developer.

(B) Remedies.

(i) Remedies Prior to Completion of the Project. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to (i) terminate this Agreement by giving Developer written notice thereof and without limitation of its other rights and remedies, and, if the Closing has occurred but the Project has not then yet been completed, require Developer to reconvey the

Property to the City, for \$1.00, free and clear of all liens and other encumbrances created by Developer, (ii) take such actions in the way of "self help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity. Developer shall be liable for all costs and damages, including without limitation attorneys fees, suffered or incurred by the City as a result of a default of Developer under this Agreement or the City's enforcement or termination of this Agreement. Upon the occurrence of an event of default and within five (5) business days after the City's demand, Developer shall deliver to the City all pertinent documents, records, invoices, and other materials pertaining to the Project that are in Developer's possession or under Developer's control, including without limitation as-built drawings (to the extent that the improvements have been completed), warranty information, operating manuals, and copies of all third-party contracts entered into by Developer in connection with the Project. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

(ii) Remedies Following Completion of the Project. Following completion of the Project, the City's rights and remedies for breach shall be as set forth in the Deed.

5. **Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below, with a copy to CAA, or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City Manager
City of Cincinnati
801 Plum Street
Cincinnati, OH 45202

To CAA:
Cincinnati Arts Association
650 Walnut Street
Cincinnati, OH 45202

To Developer:

Music Hall Revitalization Company, Inc.
409 Broadway
Cincinnati, OH 45202
Attention: Jack Rouse

If Developer sends a notice to the City alleging that the City is in default under this Agreement, Developer shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, OH 45202.

6. **Representations, Warranties, and Covenants of Developer.** Developer makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(i) Developer is a nonprofit corporation duly organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(ii) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein.

(iii) Developer's execution, delivery and performance of this Agreement and the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or Developer's organizational documents, or any mortgage, contract, agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(iv) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, at law or in equity or before or by any governmental authority.

(v) Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute or governmental proceedings or investigation affecting Developer that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition or its completion of the Project.

(vi) The statements made in the documentation provided by Developer to the City that are descriptive of Developer or the Project have been reviewed by Developer and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

7. General Provisions.

(A) Entire Agreement. This Agreement (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(B) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(C) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Developer agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(D) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and assigns. Developer shall not assign its rights or obligations under this Agreement without the prior written consent of the City, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void. The foregoing notwithstanding, Developer shall be permitted to transfer title to the Property to an affiliated entity as described in the Deed provided Developer gives prior written notice of such transfer to the City.

(E) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(F) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(G) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(H) No Brokers. The City and Developer represent to each other that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the City's transfer of the Property to Developer.

(I) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed

to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(J) Administrative Actions. To the extent permitted by applicable laws, all actions taken or to be taken by the City under this Agreement may be taken by administrative action and shall not require legislative action of the City beyond the legislative action authorizing the execution of this Agreement.

(K) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(L) Exhibits. The following Exhibits are attached hereto and made a part hereof:
Exhibit A – *Site Plan*
Exhibit B – *Scope of Work and Budget*
Exhibit C – *Form of Deed*
Exhibit D – *Additional City Requirements*

8. Removal of Pedestrian Bridge from Town Center Garage to Music Hall. The parties acknowledge that there is presently a pedestrian bridge that connects the Building to the Town Center Garage on Central Parkway. If at any time the City removes or causes to be removed the pedestrian bridge, Developer, at its sole expense, shall be responsible for repairing any and all resulting damage to the Building.

This Agreement is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "Effective Date").

MUSIC HALL REVITALIZATION COMPANY, INC.

By: _____
Printed name: _____
Title: _____
Date: _____, 2012

CITY OF CINCINNATI

By: _____
Milton Dohoney, Jr., City Manager
Date: _____, 2012

Recommended by:

Andrew Glenn
Director, Department of Public Services

Approved by:

Rochelle Thompson, Office of Contract Compliance

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Reginald Zeno, City Finance Director

CONSENT BY CINCINNATI ARTS ASSOCIATION

CINCINNATI ARTS ASSOCIATION hereby signs this Agreement for the sole purpose of acknowledging its willingness to negotiate with Developer in good faith the terms and conditions of a new management agreement for Music Hall (to supersede the Existing Management Agreement) that would take effect following the Closing, as referred to in paragraphs 2(A)(iv) and 2(E) of this Agreement, and, for so long as the Existing Management Agreement or new management agreement between Developer and CAA is in place, to work cooperatively with Developer with respect to the completion of the Project.

CINCINNATI ARTS ASSOCIATION

By: _____

Printed name: _____

Title: _____

Date: _____, 2012

EXHIBIT A
to Sale and Development Agreement

SITE PLAN

SEE ATTACHED



Dusty Rhodes, Hamilton County Auditor

Map

Parcel Info

[Summary](#)
[Residential](#)
[Levy Info](#)
[Improvements](#)
[Commercial](#)
[Transfer](#)
[Value History](#)
[Payments](#)
[Image](#)
[Assessment Payoff](#)
[Map](#)
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Search By

[Parcel ID](#)
[Owner](#)
[Street Address](#)
[Sales](#)

Site Functions

[Comments](#)
[On-Line Help](#)
[Home](#)
[Auditor's Home](#)

Parcel ID 081-0003-0040-00
Address 1241 ELM ST

Parcel ID
 1 of 1

Index Order
 Parcel ID

Card
 1 of 1

[New Map Search](#)

Click Map To:

Zoom In ▼

Zoom Level:

1x ▼

Scale: 1:2,760

Map Layers:

- ☒ Rivers
- ☒ Stream
- ☒ Buildings
- ☒ Condos
- ☒ Parcels
- ☒ Fence
- ☐ Class2 Roads
- ☒ Class1 Roads
- ☒ Streets
- ☒ Driveways
- ☒ Parking
- ☒ Sidewalk
- ☒ Pavement

- Note - A parcel will be outlined if found in the map



- Map Data provided by the office of William Brayshaw, Hamilton County Engineer

[New Map Search](#)

<< First < Previous Next > Last >>

[Legal disclaimer](#) / [Privacy Statement](#)

Data updated on 03/05/12

EXHIBIT B
to Sale and Development Agreement
SCOPE OF WORK AND BUDGET

SEE ATTACHED
(4 pages)

Music Hall Revitalization Project Scope February 24, 2012

Cincinnati Music Hall

Music Hall is a national historic landmark. The building occupies the full depth of the block between Central Parkway and Elm Street and is bounded on the north by 14th Street. The main hall was constructed in 1878 with the north and south halls constructed in 1879. The facility underwent major remodels in 1896, 1927 and 1973. Minor modifications and space specific remodels continue to occur to this day, most recently the opera office remodel in 2005. Music Hall is the home of the Cincinnati Symphony Orchestra, Cincinnati Pops Orchestra, Cincinnati Opera and the Cincinnati May Festival and hosts performances of the Cincinnati Ballet and various national traveling shows. In addition to Springer Auditorium the existing facility contains a large ballroom and the Corbett Tower, a multi-function performance space. Music Hall is located in the "Over the Rhine" historic district of Cincinnati which is currently experiencing a revitalization including a reconstruction and expansion of Washington Park across Elm Street and to the east of Music Hall. The revitalization project for Music Hall figures prominently in the revitalization of this urban area of Cincinnati.

Project Description

The project encompasses significant remodeling and reconfiguration of the existing spaces within Music Hall as well as improvements to the entry and plaza. New exterior building lighting will be provided. New canopies will be provided at entrances along Elm Street. All work will respect the historic character and fabric of the building.

- Springer Auditorium is to be reconfigured to enhance the acoustic performance of the house, improve audience comfort/experience and greatly improve the technical performance capability of the house into the future. The total number of seats in the hall will be reduced.
- The public experience of the entire facility will be enhanced and re-organized by preserving the historic lobby and developing two significant public amenity spaces in the north and south halls on the same level as the existing main lobby. This will allow for the entire Elm street ground floor to function as public space in support of the arts and the community.
- Public spaces will be designed as multi-function spaces for performance and special events. These spaces will both

support the main house needs and have the ability to diversify the performances to be staged for various audiences at Music Hall. Spaces include Ballroom, Corbett Tower, Garret Hall, and Pub. An additional rehearsal space will be provided.

- Finishes throughout the facility will be upgraded.
- Administrative offices for all resident companies will be consolidated into one office complex. This will improve efficiency and facilitate communication within the organizations. All spaces will have access to natural light.
- Back-of-house functions will be improved to support top level performing art production.
- Existing systems within the building including HVAC, Electrical, Plumbing, Fire Protection and Fire Alarm systems will be refurbished or replaced as necessary. Most of these systems are well beyond their life expectancy. Systems will be upgraded to current code standards.
- The project will reconnect to the surrounding community through developing a connection with Washington Park, reinvigorate the historic carriageways and re-opening the façade to provide natural daylight deep into the building. These aspects will provide for greater connectivity between the arts organizations and the surrounding community and environment.

MUSIC HALL REVITALIZATION PRELIMINARY BUDGET
March 1, 2012
Detail Design Budget Confirmation April 25, 2012

Estimated Cost of Work By Area

Sitework	\$2,500,000
MEP	\$23,600,000
Springer Hall and Stagehouse	\$28,180,000
Main Level Lobbies and Corbett Tower	\$14,600,000
South Hall Back of House	\$1,200,000
South Hall Office Area	\$1,000,000
Ballroom	\$1,200,000
North Hall Office Area	\$750,000
Exterior Façade and Roof	\$5,600,000
Allowances	\$1,600,000
Annex	\$9,021,000

Subtotal Cost of Work	\$89,251,000
------------------------------	---------------------

Estimated Construction Related Costs

General Conditions and Requirements	\$9,400,000
Design Scope Contingency (7%)	\$6,562,570
Escalation (4%)	\$4,012,543
Construction Contingency (7%)	\$7,302,828
Construction Management (3.25%)	\$3,933,441
Insurance (GL, BR) and CAT Tax	\$1,275,741
17 Month Schedule Compression	\$3,300,000

Subtotal Construction Related Costs	\$35,787,123
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Additional Estimated Project Costs

Owner Soft Costs	\$11,000,000
Pipefitters Lot/Building/Relocation	\$6,500,000
Design and Other Consultant Fees	\$20,000,000
Abatement and Testing	\$2,589,000

Subtotal Additional Project Costs	\$40,089,000
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TOTAL PROJECT COST	\$165,127,123
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Music Hall Revitalization Company

Sources of Funds

Individual Contributions	\$105,270,428
Corporate Pledges	\$25,000,000
New Market Tax Credits	\$9,858,935
Federal Historic Tax Credits	\$22,397,760
State Historic Tax Credits	<u>\$2,600,000</u>
	\$165,127,123

EXHIBIT C
to Sale and Development Agreement

FORM OF QUITCLAIM DEED

SEE ATTACHED

----- space above for recorder -----

QUITCLAIM DEED
(with easements, covenants and restrictions)

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to **MUSIC HALL REVITALIZATION COMPANY, INC.**, an Ohio nonprofit corporation, the tax-mailing address of which is 409 Broadway, Cincinnati, Ohio 45202 (together with its affiliated successors-in-interest, "**Grantee**"), all of the City's right, title and interest in and to the following real property (hereinafter, the "**Property**"):

Situated in the City of Cincinnati, County of Hamilton, State of Ohio, and commencing at the southeast corner of Central Parkway (formerly Plum Street) and Fourteenth Street; thence running eastwardly along the southern line of Fourteenth Street, a distance of three hundred fifty-four (354) feet to a point which is the southwest corner of Fourteenth Street and Elm Street; thence southwardly along the western line of Elm Street four hundred one and 06/100 (401.06) feet to a point on Elm Street; thence westwardly on a line parallel to the southern line of Fourteenth Street three hundred fifty-four (354) feet to a point on the eastern line of Central Parkway; thence northwardly along the eastern line of Central Parkway, four hundred one and 06/100 (401.06) feet to the place of beginning.

Street Address: Music Hall, 1241 Elm Street, Cincinnati, OH 45202
Auditor's Parcel No: 81-3-40

The City hereby reserves and creates the following easements, covenants and restrictions:

(A) Requirement to Use the Property for the Principal Use. Grantee shall renovate the Property in accordance with that certain *Sale and Development Agreement* between the City and Grantee dated _____, 2012, the terms of which are incorporated herein by reference (the "**Sale Agreement**"; and said renovation being referred to therein and herein as the "**Project**"), and during the renovation (to the extent feasible) and thereafter shall cause the Property to be continuously used (i) as a first-class performing arts and entertainment facility for performances and other entertainment and community events that are open to the public (which may be free of charge or for which admission may be charged), for the benefit of the people of the City of Cincinnati (the "**Principal Use**"), (ii) for occasional private events such as receptions, dinners, parties, weddings, class reunions, and other social gatherings provided that such private uses do not materially impair the use of the Property for the Principal Use, (iii) for business and administrative offices in support of the Principal Use, and (iv) if desired by Grantee, for the provision of ancillary services to employees and visitors (e.g., restaurants, food vendors and the like). Grantee shall not use the Property or permit the Property to be used for any other purpose. Pursuant to an existing *Agreement With the City* dated April 3, 1876 (the "**Existing Management Agreement**"), the Property is currently managed by CINCINNATI ARTS ASSOCIATION, an Ohio nonprofit corporation (together with its successors, "**CAA**") and used principally by the Cincinnati Symphony Orchestra, Cincinnati Opera, Cincinnati Ballet, and Cincinnati May Festival. From and after the date of this conveyance, Grantee shall work cooperatively with CAA with respect to CAA's continued management of the Property pursuant to the Existing Management Agreement until such time as Grantee and CAA

execute a new management agreement (to supersede the Existing Management Agreement) or mutually determine that a new management agreement is unnecessary. Grantee shall at all times ensure that the Property is maintained in good and safe condition and repair, in compliance with all applicable laws, and without reliance upon funding from the City.

(B) Utility Easements. The City hereby reserves permanent utility easements in favor of (i) METROPOLITAN SEWER DISTRICT for any and all existing storm and sanitary sewer lines within the Property, (ii) GREATER CINCINNATI WATER WORKS for any and all existing water lines within the Property, (iii) CINCINNATI BELL for any and all existing telephone facilities within the Property, and (iv) DUKE ENERGY for any and all existing gas and electric lines within the Property, for the purpose of operating, maintaining and repairing such utility lines and facilities. Grantee shall not construct any improvements or do anything else that may interfere with such utility companies' continuous access to their utility lines and facilities. If Grantee shall cause damage to such utility lines and facilities, Grantee shall promptly repair such damage, at its expense, to the satisfaction of such utility companies.

(C) No Mortgages or Liens. Grantee shall not grant or permit any mortgages or other monetary liens to attach to the Property without the prior written consent of the City; provided, however, that if Grantee is required to grant a mortgage on the Property to a third party in order to obtain financing for the Project, Grantee shall be permitted to do so, however, all rights of the mortgagee shall be subject and subordinate to the rights of the City under this Deed and under the Sale Agreement.

(D) Right of Inspection; Reporting Requirements. The City, its employees and agents shall have the right to inspect the Property from time to time to ensure that the Property is being operated and maintained as required by this Deed and under the Sale Agreement. Grantee shall furnish to the City, at no cost to the City, such routine property inspection reports, annual operating reports, and such other customary reports and information as the City may from time to time reasonably request to verify that the Property is being operated and maintained as required by this Deed and under the Sale Agreement.

(E) No Transfer to Unrelated Third Parties; Re-conveyance to the City. The City is transferring the Property to Grantee because of the City's confidence that Grantee possesses the financial capability, commitment, and expertise to successfully complete the Project and to operate and maintain the Property for the Principal Use, for the benefit of the people of the City of Cincinnati. Should Grantee desire to cease owning the Property for any reason, Grantee shall re-convey marketable title to the Property to the City, for \$1.00, by recordable limited warranty deed, free and clear of all monetary liens and encumbrances (except that customary utility easements shall be permitted) and free and clear of all rights of tenants in possession. The foregoing notwithstanding, Grantee's conveyance of the Property to an entity that is affiliated with Grantee (e.g., a parent entity, subsidiary entity, "sister" entity, or other entity that is controlled by Grantee) shall be permitted provided Grantee notifies the City in writing thereof and provided the transferee continues to operate and maintain the Property in compliance with the requirements set forth in this Deed and in the Sale Agreement. Any attempt by Grantee to convey any interest in the Property to an unaffiliated entity shall be null and void and shall trigger the reversion of title to the Property to the City under paragraph (F) below. The foregoing notwithstanding, Grantee's lease of space within the building to third parties for uses that are permitted under paragraph (A) hereof shall be permitted and shall not trigger a reversion of title under the preceding sentence.

(F) Reversion to the City in the Event of a Violation. If Grantee fails to complete the Project as and when required under the Sale Agreement or if Grantee violates any of the other requirements set forth in this Deed or under the Sale Agreement prior to completion of the Project, the City shall have the rights and remedies set forth in the Sale Agreement. If Grantee violates any provision of this Deed or under the Sale Agreement following completion of the Project, and if such violation is not corrected to the City's reasonable satisfaction within one hundred eighty (180) days after Grantee receives written notice thereof from the City (or within such longer period of time as the City deems reasonably necessary given the nature of the violation or in the event Grantee's failure to perform is due to acts of God or other events beyond Grantee's reasonable control), all right, title and interest in and to the Property and any and all improvements thereon shall automatically revert to and revest in the City as fully and completely as if this Deed had not been executed and delivered, at no cost to the City. To memorialize the same, the City

shall promptly record an affidavit of title describing the occurrence of such reversion of title in the Hamilton County, Ohio Records. Further, upon the City's demand, Grantee shall execute and deliver to the City a recordable limited warranty deed to memorialize such reversion of title, conveying marketable title to the Property, free and clear of all monetary liens and encumbrances (except that customary utility easements shall be permitted) and free and clear of all rights of tenants in possession. The foregoing shall not be construed to limit the City's other rights and remedies in the event Grantee violates the requirements of this Deed or under the Sale Agreement.

(G) Removal of Pedestrian Bridge between Town Center Garage and Music Hall. Should the City remove the existing pedestrian bridge across Central Parkway, that connects the Town Center Garage to the building, Grantee, at its sole expense, shall promptly repair any and all resulting damage to the building.

(H) Enforcement. The City is the beneficiary of the provisions set forth in this Deed. Each and every provision shall apply to and be enforceable by an action at law or in equity instituted by the City against Grantee. Any failure of the City to enforce any provision in this Deed shall not be deemed a waiver of the City's right to do so thereafter. The provisions in this Deed shall not be amended, released, extinguished or otherwise modified without the prior written consent of the City, which consent may be withheld in its sole and absolute discretion.

(I) Covenants to Run with the Land. The provisions contained herein shall be covenants running with the land, are not merely personal covenants of Grantee, and shall bind Grantee and its permitted affiliated successors-in-interest and inure to the benefit of the City. Grantee hereby agrees that any and all requirements of the laws of the State of Ohio to be satisfied in order for the provisions of this Deed to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate or privity of contract are also deemed to be satisfied in full.

[DRAFTER'S NOTE: THIS DEED MAY NEED MODIFICATION BASED UPON RESPONSES TO THE COORDINATED REPORT]

This conveyance was authorized by Ordinance No. ____-2012, passed by City Council on _____, 2012.

Prior instrument reference: Deed Book 1928, Page 348, Hamilton County, Ohio Records.

Executed on _____, 2012.

CITY OF CINCINNATI

By: _____
Milton Dohoney, Jr., City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by Milton Dohoney, Jr., City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Recommended by:

Andrew Glenn
Director, Department of Public Services

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:
Patricia D. Braxton
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

EXHIBIT D
to Sale and Development Agreement
ADDITIONAL CITY REQUIREMENTS

As used in this Exhibit, references to the "Contractor" shall mean Developer. Contractor shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati, including, but not limited to the following:

(A) **Construction Workforce.** Contractor and its subcontractors shall use Best Efforts to comply with City Resolution No. 21-1998 concerning the inclusion of minorities and women in order to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Contractor's aggregate workforce in Hamilton County, to be achieved at least halfway through the contract (or in the case of a contract of six months or more, within 60 days of beginning the contract) (collectively, the "**Construction Workforce Goals**").

The Construction Workforce Goals are not applicable to future work (such as repairs or modifications) on any portion of the Project. The Construction Workforce Goals are not applicable to the purchase of specialty fixtures and trade fixtures.

As used herein, the following terms shall have the following meanings:

(i) "**Best Efforts**" means substantially complying with all of the following as to any of its employees performing such construction, and requiring that all of its construction contractors and subcontractors substantially comply with all of the following: (1) solicitation of Minority Persons as potential employees through advertisements in local minority publications; and (2) contacting government agencies, private agencies, and/or trade unions for the job referral of qualified Minority Persons.

(ii) "**Minority Person**" means any person who is Black, Asian or Pacific Islander, Hispanic, American Indian or Alaskan Native.

(iii) "**Black**" means a person having origin in the black racial group of Africa.

(iv) "**Asian or Pacific Islander**" means a person having origin in the original people of the Far East or the Pacific Islands, which includes, among others, China, India, Japan, Korea, the Philippine Islands, Malaysia, Hawaii and Samoa.

(v) "**Hispanic**" means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish cultural origin.

(vi) "**American Indian**" or "**Alaskan Native**" means a person having origin in any of the original people of North America and who maintains cultural identification through tribal affiliation.

(B) **Trade Unions; Subcontracts; Competitive Bidding.** In addition to all other conditions and requirements set forth in this Agreement, Contractor shall comply with the following requirements as and to the extent deemed by the City to be applicable to the Project:

(i) **Meeting and Confering with Trade Unions.** This Agreement is subject to the requirements of City of Cincinnati, Ordinance No. 130-2002, as amended or superseded, providing that Contractor, prior to the commencement of construction of the Project and prior to any expenditure of City funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by Contractor, shall meet and confer with: the trade unions representing all of the crafts working on

the Project, and minority, female, and locally-owned contractors and suppliers potentially involved with the construction of the Project. At this meeting, Contractor shall make available copies of the scope of work and if prevailing wage rates apply, the rates pertaining to all proposed work on the Project. Not later than ten (10) days following Contractor's meet and confer activity, Contractor shall provide to the City, in writing, a summary of Contractor's meet and confer activity.

(ii) Subcontracts; Competitive Bidding. As authorized by Ordinance No. ____-2012, passed by City Council on _____, 2012 (being the ordinance referred to in recital Q of this Agreement), Contractor shall not be required to competitively bid work associated with the Project.

(C) City Building Code. Contractor shall ensure that all construction work is performed in compliance with City building code requirements.

(D) Lead Paint Regulations. Contractor shall ensure that all work is performed in compliance with Chapter 3742 of the Ohio Revised Code, Chapter 3701-32 of the Ohio Administrative Code, and shall comply with OSHA's Lead in Construction Regulations and the OEPA's hazardous waste rules. All lead hazard abatement work shall be supervised by an Ohio Licensed Lead Abatement Contractor/Supervisor.

(E) Displacement. If the Project involves the displacement of tenants, Contractor shall comply with all governmental requirements in connection with such displacement. If the City shall become obligated to pay any relocation costs or benefits or other sums in connection with the displacement of tenants, Contractor shall reimburse the City for any and all such amounts paid by the City in connection with such displacement within twenty (20) days after the City's written demand.

(F) Small Business Enterprise Program. As authorized by Ordinance No. ____-2012, passed by City Council on _____, 2012 (being the ordinance referred to in recital Q of this Agreement), Contractor shall not be required to achieve the City's SBE goals set forth in Chapter 323 of the Cincinnati Municipal Code.

(G) Equal Employment Opportunity. This Agreement is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. The provisions of Chapter 325 of the Cincinnati Municipal Code are hereby incorporated by reference into this Agreement.

(H) Prevailing Wage. Contractor shall comply, and shall cause all contractors working on the Project to comply, with all applicable prevailing wage requirements. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Contractor shall make such payments or reimburse the City for such payments within twenty (20) days of demand therefor.

(i) Compliance with the Immigration and Nationality Act. In the performance of its construction obligations under this Agreement, Contractor shall comply with the following provisions of the federal Immigration and Nationality Act: 8 U.S.C.A. 1324a(a)(1)(A) and 8 U.S.C.A. 1324a(a)(2). Compliance or noncompliance with those provisions shall be solely determined by final determinations resulting from the actions by the federal agencies authorized to enforce the Immigration and Nationality Act, or by determinations of the U.S.

(J) Prompt Payment. The provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System", apply to this Agreement.

(K) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal financial interest, direct or indirect, in Contractor or in the Project, and Contractor shall take appropriate steps to assure compliance.

(L) Superjobs. To the extent determined by the City to be applicable to the Project, this Agreement is subject to the Superjobs Center Employment Postings requirement established in Ordinance No. 238-2010 as follows: To the extent allowable by law, Contractor shall use its best efforts to post available employment opportunities with Contractor's organization or the organization of any subcontractor working with Contractor with the Superjobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Business Services Unit Manager at 513-458-6599.

End of Agreement